THE HONOUABLE SRI JUSTICE V.ESWARAIAH

W.P. No. 8403 of 2003

Date:26-03-2007

Between:

Meesala Krishnaveni .. **PETITIONER**

AND

The Commissioner of Police,Visakhapatnam and another

..

RESPONDENTS

ORDER:

The petitioner seeks a writ of mandamus to declare the action of the 2nd respondent in filing the incomplete report/charge sheet in Crime No.26 of 2003 before the III Metropolitan Magistrate Court, Visakhapatnam as illegal and arbitrary.

2. The petitioner lodged a written report before the Sub-Inspector of Police, V Town, Law and Order, Police Station, Visakhapatnam on 13.02.2003 against her husband and four others alleging that they have committed a cognizable offence. Based on the said written report, the second respondent registered F.I.R.No.26 of 2003, dt.13.03.2003 for the offence punishable under Section 498-A of Indian Penal Code. Thereafter, the investigating officer after examining the petitioner as L.W.1 and two more witnesses i.e. L.Ws.2 and 3 corroborating the material statement of the petitioner, and after completing investigation filed charge sheet for the offence punishable under Section 498-A I.P.C. in the Court of the III Metropolitan Magistrate, Visakhapatnam which was also numbered as C.C.No.234 of 2003.

3. Learned counsel appearing for the petitioner submits that the second respondent has not properly investigated the case and simply filed the charge sheet reproducing the statements of the written intimation as it is. It is stated that whenever a written representation has been filed under Section 154 Cr.P.C., the Station House Officer shall make an enquiry, investigate the same under Section 156(1) Cr.P.C. as per the procedure contemplated under Section 157 Cr.P.C. It is stated that on the information received by the station house officer, the station house officer shall proceed to the spot to investigate the facts and circumstances of the case and if necessary take measures for the discovery and arrest of the offenders. It is stated that the investigating officer did not examine the concerned persons/witnesses and neighbours and simply examined three witnesses only and filed the charge sheet.

4. The respondents filed counter stating that the second respondent has not omitted any material witness. In fact, no independent witness came forward to speak about the alleged offence and therefore, no neighbour is examined in this case. It is further stated that the evidence collected is sufficient to establish the prima facie case of the offence alleged. If the complainant has any objection regarding the investigation, she can as well file the objections before the concerned Magistrate before whom the charge sheet has been filed. Further, if really any material witnesses have not been examined as indicated in the F.I.R. or if there were other material witnesses, it is always open the petitioner to bring to the notice of the investigating officer. But, in the absence of such representation or steps taken by the petitioner, it cannot be said that the police officials have purposefully omitted to examine the independent neighbour witnesses.

5. No doubt, under Section 173 (8) Cr.P.C. it is open for the Station House Officer to file further reports based on the further evidence oral or documentary.

6. The point that arises for consideration in this petition is whether the investigating officer has failed to examine the material witnesses or failed to file any other documents?

7. If any material witnesses have not been examined, the petitioner could have made a representation before the concerned Station House Officer himself and if there was any doubt with regard to genuineness or otherwise of the honesty of the Station House Officer in conducting the impartial enquiry, it is always open for the petitioner to make a representation before the Superintendent of Police for taking appropriate action.

8. It is also open for the concerned Magistrate under Section 159 Cr.P.C. either to proceed based on the report or he himself can

conduct a preliminary enquiry and dispose of the matter as provided under the Code of Criminal Procedure. Even though the police investigation is pending in respect of the same case, it is also open for the complainant to file a private complaint under Section 200 Cr.P.C. r/w 190 Cr.P.C. in which the case the learned Magistrate is empowered to ask for a report and then proceed with the case on the police report as well as the private complaint. But, in the instant case, the petitioner has not taken any steps as available under the appropriate provisions of the Code of Criminal Procedure. In fact, the petitioner has filed no representation. Therefore, it is not proper for this Court to appreciate the said contention that the investigating officer has not examined the material witnesses.

In view of the above, the writ petition is dismissed. No costs. The dismissal of the writ petition cannot preclude the petitioner to take appropriate steps.

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V.ESWARAIAH, J.

Date:26.03.2007
CCM